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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

In the matter of:

USA BARCELONA REALTY ADVISORS,
LLC, an Arizona limited liability company,

USA BARCELONA HOTEL LAND
COMPANY I, LLC, an Arizona limited liability
company,

RICHARD C. HARKINS, an unmarried man,

ROBERT J. KERRIGAN (CRD no. 268516)
An unmarried man,

GEORGE T. SIMMONS and JANET B.
SIMMONS, husband and wife,

BRUCE ORR, an unmarried man,

Mr. Simmons.

DOCKET NO. S-20938A-15-0308

**ANSWER OF RESPONDENT GEORGE
T. SIMMONS TO TEMPORARY
ORDER TO CEASE AND DESIST AND
NOTICE OF OPPORTUNITY FOR
HEARING**

Arizona Corporation Commission

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Respondent George T. Simmons ("**Mr. Simmons**") answers or otherwise responds to the
allegations of the Securities Division (the "**Division**") of the Arizona Corporation Commission (the

1 “**Commission**”) set forth in the Temporary Order to Cease and Desist and Notice of Opportunity for
2 Hearing dated August 26, 2015 (the “**Notice**”). Janet B. Simmons is joined in this action and named
3 as Respondent Spouse solely for purposes of determining the liability of her marital community;
4 when used in this pleading, the term “Mr. Simmons” includes the marital community of George T.
5 Simmons and Janet B. Simmons.

6
7 Mr. Simmons denies engaging in acts, practices or transactions that constitute violations of
8 the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (the “**Securities Act**”), and denies that the
9 public welfare requires immediate action. In addition, Mr. Simmons denies that he directly or
10 indirectly controlled USA Barcelona Realty Advisors, LLC (“**Barcelona Advisors**”) within the
11 meaning of A.R.S. § 44-1999, and denies that he is jointly and severally liable under A.R.S. § 44-
12 1999 to the same extent as Barcelona Advisors for any alleged violations of the Securities Act.

13
14 Mr. Simmons responds as follows:

15
16 **I.**

JURISDICTION

17 1. Answering paragraph 1, Mr. Simmons admits only that the Commission has
18 jurisdiction over certain matters pursuant to Article XV of the Arizona Constitution and the
19 Securities Act; the allegations of paragraph 1 call for a legal conclusion, and on that basis, the
20 allegations are denied.

21
22 **II.**

RESPONDENTS

23
24 2. The allegations of paragraph 2 do not specifically pertain to Mr. Simmons, and Mr.
25 Simmons lacks sufficient knowledge and information to form a belief as to the truth of the
26 allegations in paragraph 2, and on that basis, the allegations are denied.

3. The allegations of paragraph 3 do not specifically pertain to Mr. Simmons, and Mr. Simmons lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 3, and on that basis, the allegations are denied.

4. Mr. Simmons admits the allegations in paragraph 4.

5. The allegations of paragraph 5 do not specifically pertain to Mr. Simmons, and Mr. Simmons lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 5, and on that basis, the allegations are denied.

6. Mr. Simmons admits that Barcelona Advisors is a limited liability company that was organized under Arizona law. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the truth of the other allegations in paragraph 6, and on that basis, the allegations are denied.

7. Mr. Simmons admits that USA Barcelona Hotel Land Company I, LLC ("***Barcelona Land Company***") is a limited liability company that was organized under Arizona law. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the truth of the other allegations in paragraph 7, and on that basis, the allegations are denied.

8. Mr. Simmons admits the allegations in paragraph 8.

9. Mr. Simmons admits the allegations in paragraph 9.

10. Answering paragraph 10, that paragraph contains no allegations of fact to which Mr. Simmons need respond.

III.

FACTS

11. The allegations in paragraph 11 do not apply to Mr. Simmons thus, no response from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks

1 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
2 11, and on that basis, the allegations are denied.

3 12. Answering paragraph 12 Mr. Simmons admits he was an Executive Member of
4 Barcelona Advisors beginning July 2013 until at least August 2014, and that Respondents Richard
5 C. Harkins ("*Harkins*"), Robert J. Kerrigan ("*Kerrigan*") and Bruce Orr ("*Orr*") also served as
6 Executive Members during that time. Mr. Simmons avers that Rodney L. Eaves ("*Eaves*") also
7 served as an Executive Member for some period of time. Further answering, Mr. Simmons lacks
8 sufficient knowledge and information to form a belief as to the truth of the other allegations in
9 paragraph 12, and on that basis, the allegations are denied.
10

11 13. The allegations of paragraph 13 do not specifically pertain to Mr. Simmons, and Mr.
12 Simmons lacks sufficient knowledge and information to form a belief as to the truth of the
13 allegations in paragraph 13, and on that basis, the allegations are denied.
14

15 14. The allegations in paragraph 14 do not apply to Mr. Simmons; thus, no response
16 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
17 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
18 14, and on that basis, the allegations are denied.

19 15. Mr. Simmons denies the allegations of paragraph 15.

20 16. Answering paragraph 16, the paragraph contains no allegations of fact to which Mr.
21 Simmons need respond. To the extent that Mr. Simmons must respond to these allegations, he lacks
22 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
23 16, and on that basis, the allegations are denied.
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25 17. The allegations in paragraph 17 do not apply to Mr. Simmons; thus, no response
26 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
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1 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
2 17, and on that basis, the allegations are denied.

3 18. The allegations in paragraph 18 do not apply to Mr. Simmons; thus, no response
4 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
5 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
6 18, and on that basis, the allegations are denied.
7

8 19. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
9 truth of the allegations in paragraph 19, and on that basis, the allegations are denied.

10 20. Answering paragraph 20, the paragraph contains no allegations of fact to which Mr.
11 Simmons need respond. Mr. Simmons avers that the October 2012 PPM, as defined in the Notice,
12 (the "**October 12 PPM**") speaks for itself and any allegations made to the contrary are denied. To
13 the extent that Mr. Simmons must respond to the allegations, he lacks sufficient knowledge and
14 information to form a belief as to the truth of the allegations in paragraph 20, and on that basis, the
15 allegations are denied.
16

17 21. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
18 truth of the allegations in paragraph 21, and on that basis, the allegations are denied.

19 22. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
20 truth of the allegations in paragraph 22, and on that basis, the allegations are denied.
21

22 23. Answering paragraph 23, the paragraph contains no allegations of fact to which Mr.
23 Simmons need respond. Mr. Simmons avers that the stated business plan, as referred to in the
24 Notice, speaks for itself and any allegations made to the contrary are denied.

25 24. The allegations in paragraph 24 do not apply to Mr. Simmons; thus, no response
26 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
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1 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
2 24, and on that basis, the allegations are denied.

3 25. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
4 truth of the allegations in paragraph 25, and on that basis, the allegations are denied.

5 26. The allegations in paragraph 26 do not apply to Mr. Simmons; thus, no response
6 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
7 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
8 26, and on that basis, the allegations are denied.

9 27. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
10 truth of the allegations in paragraph 27, and on that basis, the allegations are denied.

11 28. The allegations in paragraph 28 do not apply to Mr. Simmons; thus, no response
12 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
13 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
14 28, and on that basis, the allegations are denied.

15 29. The allegations in paragraph 29 do not apply to Mr. Simmons; thus, no response
16 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
17 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
18 29, and on that basis, the allegations are denied. Further answering, the October 2012 PPM speaks
19 for itself and any allegations made to the contrary are denied.

20 30. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
21 truth of the allegations in paragraph 30, and on that basis, the allegations are denied. Further
22 answering, the October 2012 PPM speaks for itself and any allegations made to the contrary are
23 denied.

1 31. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
2 truth of the allegations in paragraph 31, and on that basis, the allegations are denied. Further, the
3 October 2012 PPM speaks for itself and any allegations made to the contrary are denied.

4 32. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
5 truth of the allegations in paragraph 32, and on that basis, the allegations are denied. Further
6 answering, the October 2012 PPM speaks for itself and any allegations made to the contrary are
7 denied.
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9 33. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
10 truth of the allegations in paragraph 33, and on that basis, the allegations are denied. Further
11 answering, the October 2012 PPM speaks for itself and any allegations made to the contrary are
12 denied.
13

14 34. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
15 truth of the allegations in paragraph 34, and on that basis, the allegations are denied. Further
16 answering, the October 2012 PPM speaks for itself and any allegations made to the contrary are
17 denied.

18 35. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
19 truth of the allegations in paragraph 35, and on that basis, the allegations are denied.
20

21 36. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
22 truth of the allegations in paragraph 36, and on that basis, the allegations are denied. Further
23 answering, the October 2012 PPM speaks for itself and any allegations made to the contrary are
24 denied.

25 37. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
26 truth of the allegations in paragraph 37, and on that basis, the allegations are denied.
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1 38. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
2 truth of the allegations in paragraph 38, and on that basis, the allegations are denied.

3 39. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
4 truth of the allegations in paragraph 39, and on that basis, the allegations are denied.

5 40. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
6 truth of the allegations in paragraph 40, and on that basis, the allegations are denied.

7 41. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
8 truth of the allegations in paragraph 41, and on that basis, the allegations are denied.

9 42. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
10 truth of the allegations in paragraph 42, and on that basis, the allegations are denied.

11 43. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
12 truth of the allegations in paragraph 43, and on that basis, the allegations are denied.

13 44. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
14 truth of the allegations in paragraph 44, and on that basis, the allegations are denied.

15 45. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
16 truth of the allegations in paragraph 45, and on that basis, the allegations are denied.

17 46. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
18 truth of the allegations in paragraph 46, and on that basis, the allegations are denied.

19 47. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
20 truth of the allegations in paragraph 47, and on that basis, the allegations are denied.

21 48. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
22 truth of the allegations in paragraph 48, and on that basis, the allegations are denied.

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1 49. Answering paragraph 49, Mr. Simmons denies that he offered or sold promissory
2 notes issued by Barcelona Advisors. Further answering, Mr. Simmons lacks sufficient knowledge
3 and information to form a belief as to the truth of the remaining allegations in paragraph 49, and on
4 that basis, allegations are denied.

5 50. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
6 truth of the allegations in paragraph 50, and on that basis, the allegations are denied.

7 51. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
8 truth of the allegations in paragraph 51, and on that basis, the allegations are denied.

9 52. The allegations in paragraph 52 do not apply to Mr. Simmons; thus, no response
10 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
11 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
12 52, and on that basis, the allegations are denied. Further answering, the business plan speaks for
13 itself and any allegations made to the contrary are denied.

14 53. Answering paragraph 53, Mr. Simmons admits to the existence of the December 31,
15 2013 letter. Further answering, the December 31, 2013 letter speaks for itself and any allegations
16 made to the contrary are denied.

17 54. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
18 truth of the allegations in paragraph 54, and on that basis, the allegations are denied.

19 55. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
20 truth of the allegations in paragraph 55, and on that basis, the allegations are denied.

21 56. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
22 truth of the allegations in paragraph 56, and on that basis, the allegations are denied.

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1 57. The allegations in paragraph 57 do not apply to Mr. Simmons; thus, no response from him is
2 required. To the extent that Mr. Simmons must respond to these allegations, he lacks sufficient
3 knowledge and information to form a belief as to the truth of the allegations in paragraph 57, and on
4 that basis, the allegations are denied.

5 58. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
6 truth of the allegations in paragraph 58, and on that basis, the allegations are denied.

7 59. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
8 truth of the allegations in paragraph 59, and on that basis, the allegations are denied. Further
9 answering, the January 2014 PPM, as defined in the Notice (the "*January 2014 PPM*") speaks for
10 itself and any allegations made to the contrary are denied.

11 60. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
12 truth of the allegations in paragraph 60, and on that basis, the allegations are denied. Further
13 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
14 denied.

15 61. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
16 truth of the allegations in paragraph 61, and on that basis, the allegations are denied. Further
17 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
18 denied.

19 62. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
20 truth of the allegations in paragraph 62, and on that basis, the allegations are denied. Further
21 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
22 denied.

1 63. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the truth of
2 the allegations in paragraph 63, and on that basis, the allegations are denied. Further answering, the
3 January 2014 PPM speaks for itself and any allegations made to the contrary are denied.

4 64. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
5 truth of the allegations in paragraph 64, and on that basis, the allegations are denied. Further
6 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
7 denied.
8

9 65. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
10 truth of the allegations in paragraph 65, and on that basis, the allegations are denied. Further
11 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
12 denied.
13

14 66. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
15 truth of the allegations in paragraph 66, and on that basis, the allegations are denied. Further
16 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
17 denied.

18 67. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
19 truth of the allegations in paragraph 67, and on that basis, the allegations are denied. Further
20 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
21 denied.
22

23 68. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
24 truth of the allegations in paragraph 68, and on that basis, the allegations are denied. Further
25 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
26 denied.
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1 69. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
2 truth of the allegations in paragraph 69, and on that basis, the allegations are denied.

3 70. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
4 truth of the allegations in paragraph 70, and on that basis, the allegations are denied. Mr. Simmons
5 avers that a draft private placement memorandum for Barcelona Land Company was created in May
6 2014 (the "**2014 Draft Memorandum**"), however no final private placement memorandum was ever
7 approved for use. Mr. Simmons avers that Barcelona Land Company never offered or sold any
8 membership interests, and that no May 2014 Offering ever occurred as alleged. Further answering,
9 the May 2014 PPM, as defined in the Notice (the "**May 2014 PPM**") speaks for itself and any
10 allegations to the contrary are denied.
11

12 71. Answering paragraph 71, the paragraph contains no allegations of fact to which Mr.
13 Simmons need respond. Mr. Simmons lacks sufficient knowledge and information to form a belief
14 as to the truth of the allegations in paragraph 71, and on that basis, the allegations are denied.
15

16 72. Answering paragraph 72, Mr. Simmons admits that the 2014 Draft Memorandum
17 referred to Chanen Construction Company, Inc., a major general contracting company (the
18 "**Contractor**"), and avers that the 2014 Draft Memorandum contains draft disclosures approved by
19 the Contractor that accurately describe an agreement in principle that had been negotiated with the
20 Contractor. However, no final agreement was signed with the Contractor, and no private placement
21 memorandum was ever approved for use. Further answering, the May 2014 PPM speaks for itself
22 and any allegations to the contrary are denied.
23

24 73. Mr. Simmons denies the allegations in paragraph 73, and avers that an agreement in
25 principle was reached with the Contractor.
26
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1 74. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the truth of
2 the allegations in paragraph 74, and on that basis, the allegations are denied. Further answering ,
3 Mr. Simmons avers that the May 2014 PPM speaks for itself, and any allegations to the contrary are
4 denied.

5
6 75. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
7 truth of the allegations in paragraph 75, and on that basis, the allegations are denied. Further
8 answering , Mr. Simmons avers that the May 2014 PPM speaks for itself, and any allegations to the
9 contrary are denied.

10 76. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
11 truth of the allegations in paragraph 76, and on that basis, the allegations are denied. Further
12 answering , Mr. Simmons avers that the May 2014 PPM speaks for itself, and any allegations to the
13 contrary are denied.

14
15 77. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
16 truth of the allegations in paragraph 77, and on that basis, the allegations are denied. Further
17 answering , Mr. Simmons avers that the May 2014 PPM speaks for itself, and any allegations to the
18 contrary are denied.

19 78. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
20 truth of the allegations in paragraph 78, and on that basis, the allegations are denied. Further
21 answering , Mr. Simmons avers that the May 2014 PPM speaks for itself, and any allegations to the
22 contrary are denied.

23
24 79. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
25 truth of the allegations in paragraph 79, and on that basis, the allegations are denied. Further
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1 answering, Mr. Simmons avers that the May 2014 PPM speaks for itself, and any allegations to the
2 contrary are denied.

3 80. The allegations in paragraph 80 do not apply to Mr. Simmons; thus, no response
4 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
5 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
6 80, and on that basis, the allegations are denied.
7

8 81. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
9 truth of the allegations in paragraph 81, and on that basis, the allegations are denied.

10 82. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
11 truth of the allegations in paragraph 82, and on that basis, the allegations are denied.

12 83. The allegations in paragraph 83 do not apply to Mr. Simmons; thus, no response
13 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
14 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
15 83, and on that basis, the allegations are denied.
16

17 84. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
18 truth of the allegations in paragraph 84, and on that basis, the allegations are denied.

19 85. Mr. Simmons lacks sufficient knowledge and information to form a belief as to the
20 truth of the allegations in paragraph 85, and on that basis, the allegations are denied.
21

22 86. The allegations in paragraph 86 do not apply to Mr. Simmons; thus, no response
23 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
24 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
25 86, and on that basis, the allegations are denied.
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1 87. The allegations in paragraph 87 do not apply to Mr. Simmons; thus, no response
2 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
3 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
4 87, and on that basis, the allegations are denied.

5 88. The allegations in paragraph 88 do not apply to Mr. Simmons; thus, no response
6 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
7 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
8 88, and on that basis, the allegations are denied.

9 89. The allegations in paragraph 89 do not apply to Mr. Simmons; thus, no response
10 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
11 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
12 89, and on that basis, the allegations are denied.

13 90. The allegations in paragraph 90 do not apply to Mr. Simmons; thus, no response
14 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
15 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
16 90, and on that basis, the allegations are denied.

17 91. The allegations in paragraph 91 do not apply to Mr. Simmons; thus, no response
18 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
19 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
20 91, and on that basis, the allegations are denied.

21 92. The allegations in paragraph 92 do not apply to Mr. Simmons; thus, no response
22 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
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1 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
2 92, and on that basis, the allegations are denied.

3 93. The allegations in paragraph 93 do not apply to Mr. Simmons; thus, no response
4 from him is required. To the extent that Mr. Simmons must respond to these allegations, he lacks
5 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
6 93, and on that basis, the allegations are denied.
7

8
9 **IV.**

10 **VIOLATIONS OF A.R.S. § 44-1991**

11 **(Fraud in Connection with the Offer or Sale of Securities)**
12

13 94. Mr. Simmons denies the allegations in paragraph 94, which call for a legal
14 conclusion. Mr. Simmons specifically denies that, in connection with the offer or sale of securities
15 within or from Arizona, he, directly or indirectly: (a) employed a device, scheme or artifice to
16 defraud; (b) made untrue statements of material fact or omitted to state material facts that were
17 necessary in order to make the statements made not misleading in light of circumstances under
18 which they were made; or (c) engaged in transactions, practices, or courses of business that operated
19 or would operate as a fraud or deceit upon offerees and/or investors.
20

21 95. Mr. Simmons denies the allegations in paragraph 95, which call for legal
22 conclusions. Mr. Simmons specifically denies: (a) any alleged omissions, (b) that any additional
23 alleged disclosures were required; and (c) that he had any responsibility for making any alleged
24 misrepresentations or any alleged omissions.
25

26 96. The allegations in paragraph 96 are legal conclusions for which no response is
27 required of Mr. Simmons, and, therefore, none is given. In the event that a response is required from
28

1 Mr. Simmons, the allegations are denied. Mr. Simmons specifically denies that he engaged in any
2 conduct that violated A.R.S. § 44-1991.

3
4 **V.**

5 **CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

6
7 97. Mr. Simmons denies the allegations in paragraph 97, which call for legal
8 conclusions. Mr. Simmons specifically denies that he directly or indirectly controlled Barcelona
9 Advisors within the meaning of A.R.S. § 44-1999, and denies that he is therefore jointly and
10 severally liable under A.R.S. § 44-1999 to the same extent as Barcelona Advisors for its alleged
11 violations of A.R.S. § 44-1991.

12 98. Mr. Simmons denies the allegations in paragraph 98, which call for legal
13 conclusions. Mr. Simmons specifically denies that he directly or indirectly controlled Barcelona
14 Land Company within the meaning of A.R.S. § 44-1999, and denies that he is therefore jointly and
15 severally liable under A.R.S. § 44-1999 to the same extent as Barcelona Advisors for its alleged
16 violations of A.R.S. § 44-1991.

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19 **VI.**

20 **REMEDIES PURSUANT TO A.R.S. § 44-1962**

21 **(Denial, Revocation, Or Suspension of Salesman Registration; Restitution, Penalties, or Other**
22 **Affirmative Action)**

23
24
25 99. The allegations in paragraph 1 of Part VI of the Order do not apply to Mr. Simmons;
26 thus, no response from him is required. To the extent that Mr. Simmons must respond to these
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1 allegations, he lacks sufficient knowledge and information to form a belief as to the truth of the
2 allegations, and on that basis, the allegations are denied.

3 100. Mr. Simmons denies the allegations of paragraph 2 of Part VI of the Order, which
4 call for a legal conclusion.

5
6 **VII.**

7 **TEMPORARY ORDER**

8 **Cease and Desist from Violating the Securities Act**

9
10 101. Responding to the Division's request for a Temporary Order against Mr. Simmons,
11 Mr. Simmons denies the Division's allegations and requests that the Commission dismiss the
12 Complaint and deny the Division's request for relief.

13
14
15 **VIII.**

16 **REQUESTED RELIEF**

17
18 102. Responding to the Division's request for relief against Mr. Simmons, Mr. Simmons
19 requests that the Commission dismiss the Complaint and deny the Division's request for relief.

20
21 **IX.**

22 **HEARING OPPORTUNITY**

23
24
25 103. Mr. Simmons previously filed a request for hearing and a pre-hearing conference,
26 which has been set for October 13. Mr. Simmons reiterates his request for a hearing.

1 **IX.**

2 **ANSWER REQUIREMENT**

3 104. Mr. Simmons reiterates his request for a hearing, and files this Answer to the Order
4 as required.

5
6 **GENERAL DENIAL**
7

8
9 105. Mr. Simmons expressly denies each and every allegation of the Order not expressly
10 admitted above. Mr. Simmons avers that he has never violated any Arizona securities law, nor has
11 he been a control person of any entity which has violated any Arizona securities law, nor has he
12 authorized any other person to violate any Arizona securities law on his behalf.
13

14 **AFFIRMATIVE DEFENSES**
15

16
17 106. Mr. Simmons alleges that the Order fails to state a claim upon which relief can be
18 granted, and this matter should be dismissed against Mr. Simmons in its entirety, with prejudice.

19 107. Mr. Simmons alleges that to the extent that any securities were involved in the
20 alleged transactions, the securities, and/or the transactions in which they were offered and sold,
21 were exempt from the registration and/or licensing provisions of the Securities Act.
22

23 108. Mr. Simmons alleges that he did not offer or sell any securities under Arizona law.

24 109. Mr. Simmons alleges that the alleged investors did not rely, reasonably or otherwise,
25 on any misrepresentation made by Mr. Simmons.

26 110. Mr. Simmons alleges that he has not taken any illegal or improper actions within or
27 from the State of Arizona.
28

1 111. Mr. Simmons alleges that the claims in the Order are barred by applicable statutes of
2 limitation.

3 112. Mr. Simmons alleges that the claims in the Order are barred by the doctrines of
4 waiver, estoppel, laches, unclean hands, and contributory negligence.

5 113. Mr. Simmons alleges that the claims in the Order are barred by assumption of risk.

6 114. Mr. Simmons alleges that the Commission has failed to allege securities fraud with
7 reasonable particularity as required by applicable law and the Arizona Rules of Civil Procedure.

8 115. Mr. Simmons alleges that he did not know, and in the exercise of reasonable care,
9 could not have known, of any untrue statements or material omissions as alleged in the Order.

10 116. Mr. Simmons alleges that he did not act with the requisite scienter.

11 117. Mr. Simmons alleges that he did not employ a deceptive or manipulative device, or
12 scheme or artifice to defraud in connection with the offer, purchase or sale of any security.

13 118. Mr. Simmons alleges that he did not make any misrepresentations or omissions,
14 material or otherwise, in connection with the offer or sale of any securities.

15 119. Mr. Simmons alleges that violations of the Securities Act, if any, were proximately
16 caused and contributed to by the improper conduct of intervening acts of the other persons or
17 entities named in the Order and/or other third persons who were not named in the Order.

18 120. Mr. Simmons alleges that he acted in good faith and did not directly or indirectly
19 induce any of the conduct at issue.

20 121. Mr. Simmons alleges that no investors have suffered any damages as a result of any
21 acts or omissions of Mr. Simmons.

22 122. Mr. Simmons alleges that any damages alleged to have been suffered by investors
23 were caused by the actions of parties not under the control of Mr. Simmons.
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1 123. Mr. Simmons alleges that the investors relied on other culpable parties in connection
2 with the matters alleged in the Order.

3 124. Mr. Simmons alleges that restitution is barred because damages, if any, were caused
4 by the investors' own acts or omissions and/or by the investors' failure to mitigate their damages.

5 125. Mr. Simmons alleges that certain claims in the Order are barred, in whole or in part,
6 because the investors' damages, if any, were caused by the acts of other persons or entities that Mr.
7 Simmons did not control, and for which Mr. Simmons is not legally responsible.

8 126. Mr. Simmons alleges that certain claims in the Order are barred, in whole or in part,
9 because the investors' damages, if any, were caused by the intervening and superseding acts of
10 other persons or entities that Mr. Simmons did not control, and for which Mr. Simmons is not
11 legally responsible.
12

13 127. Mr. Simmons alleges that certain claims in the Order are barred, in whole or in part,
14 because of mutual mistake.
15

16 128. Mr. Simmons alleges that certain claims in the Order are barred, in whole or in part,
17 because of payments, accord and satisfaction.

18 129. Mr. Simmons alleges that certain claims in the Order are precluded, in whole or in
19 part, by offsets.

20 130. Mr. Simmons alleges that certain claims in the Order are barred, in whole or in part,
21 because the investors acted in bad faith.
22

23 131. Further investigation and discovery in this matter may reveal the existence of
24 additional affirmative defenses. Therefore, Mr. Simmons reserves as possible defenses all other
25 defenses available under the Arizona Rules of Civil Procedure.
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132. Mr. Simmons reserves the right to amend this Answer to assert additional affirmative defenses after completion of investigation and discovery.

WHEREFORE, having fully answered the Order, there is no basis for imposing liability of any kind against Mr. Simmons, and he asks that:

A. The Order be dismissed with prejudice against Mr. Simmons; and there should be no order of any kind against him;

B. Mr. Simmons' request for a hearing, which was previously filed, be reaffirmed; and

C. Mr. Simmons be awarded such other and further relief as may be appropriate under the circumstances.

DATED this 1st day of October, 2015.

Clark Hill PLC

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 Scottsdale, AZ 85254
Counsel for Respondents
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Janet B. Simmons

ORIGINAL and thirteen copies of the foregoing
filed this 2nd day of October, 2015 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

1 COPY of the foregoing hand-delivered
2 This 2nd day of October, 2015 to:

3 Matthew J. Neubert
4 Director of Securities
5 Securities Division
6 Arizona Corporation Commission
7 1300 W. Washington Street, 3rd Floor
8 Phoenix, AZ 85007

9 Hearing Officer
10 Hearing Division
11 Arizona Corporation Commission
12 1200 W. Washington Street
13 Phoenix, AZ 85007

14 Paul Kitchin
15 Securities Division
16 Arizona Corporation Commission
17 1300 W. Washington, 3rd Floor
18 Phoenix, AZ 85007

19 COPY of the foregoing mailed
20 this 1st day of October, 2015 to:

21 USA Barcelona Realty Advisors, LLC
22 c/o Richard C. Harkins
23 4422 East Lupine Avenue
24 Phoenix, AZ 85028

25 USA Barcelona Hotel Land Company I, LLC
26 c/o Richard C. Harkins
27 4422 East Lupine Avenue
28 Phoenix, AZ 85028

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